

FILED

JUN 16 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TOMAS RUIZ-GONZALEZ,

Defendant - Appellant.

No. 05-10684

D.C. No. CR-05-00046-MHP

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted June 12, 2006^{**}

Before: KLEINFELD, PAEZ and BERZON, Circuit Judges.

Tomas Ruiz-Gonzalez appeals the sentence imposed following his conviction for unlawful reentry of a deported alien in violation of 8 U.S.C. § 1326. Ruiz-Gonzalez contends that the district court erred in enhancing his sentence

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 8 U.S.C. § 1326(b) based on a non-jury fact-finding regarding his prior conviction. As Ruiz-Gonzalez concedes, his contention is foreclosed by this court's precedent, and he raises the issue only to preserve it should legal precedent change. *See United States v. Weiland*, 420 F.3d 1062, 1079 n. 16 (9th Cir. 2005) (holding that we are bound to follow *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), even though it has been called into question, unless it is explicitly overruled by the Supreme Court); *United States v. Quintana-Quintana*, 383 F.3d 1052, 1053 (9th Cir. 2004).

AFFIRMED.